

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DALE K. GULBRANSEN,

Petitioner,

vs.

CRAIG FARWELL, *et. al.*,

Respondents.

3:05-cv-0544-PMP-VPC

**ORDER**

This is an action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, by Dale Gulbransen, a Nevada prisoner. Before the court is the respondents' motions for conditional service of subpoena (dockets #53 and #54), requesting that certain witnesses be allowed to appear at the evidentiary hearing scheduled for July 30, 2010 in Las Vegas, Nevada, via telephone. One witness resides in St. George, Utah and the other in Bonney Lake, Washington. Respondents' offered justification for the motion is "to save money and time for the witness[es]."

Respondents submitted a proposed order granting the motion. In the meanwhile, the court determined the motion should be denied and drafted an order containing the language set forth below. Through error, both orders were issued and the order granting the motion was docketed before the error was discovered. Therefore, the Order granting respondents' motion for conditional service of subpoena (docket # 58) shall be rescinded and recalled.

F.R.C.P. 43 requires that the testimony of witnesses be taken in open court and that

1 “only for good cause in compelling circumstances and with appropriate safeguards,” may the court  
2 “permit testimony in open court by contemporaneous transmission from a different location.” The  
3 court has not heard good cause or compelling circumstances in this instance.

4 The subject hearing is an evidentiary hearing in order for the court to judge the  
5 veracity and credibility of the various witnesses, some of whom presented contradictory affidavits to  
6 the state court on the issues to be considered here. In order for such evaluation, a review of the  
7 witnesses’ demeanor is vitally important. Thus, the respondents’ motion shall be denied. Any  
8 witnesses offering testimony shall appear in person in Courtroom 7C at the Lloyd D. George  
9 Courthouse in Las Vegas, Nevada.

10 **IT IS THEREFORE ORDERED** that the Order granting respondents’ motions at  
11 docket # 53 and #54, issued in error and docketed at #58, is hereby **RESCINDED AND**  
12 **RECALLED.**

13 **IT IS FURTHER ORDERED** that the motions for conditional service of subpoena  
14 (dockets #53 and #54) are **DENIED.**

15  
16 DATED: July 22, 2010.

17  
18 

19 PHILIP M. PRO  
20 United States District Judge  
21  
22  
23  
24  
25  
26